

LEITMOTIF MINING CO., INC.

IBLA 92-173

Decided December 1, 1992

Appeal from a decision of the Nevada State Office, Bureau of Land Management, rejecting for recordation notices of location for certain unpatented mining claims (NMC 617741 through NMC 617772).

Reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claim Certificates or Notices of Location -- Mining Claims: Recordation of Certificate or Notice of Location

The "proper office of BLM" for purposes of recording mining claims is defined in 43 CFR 3833.0-5(g) as the BLM office listed in 43 CFR 1821.1-2(d) as having jurisdiction over the area in which the claims are located.

2. Estoppel -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claim Certificates or Notices of Location -- Mining Claims: Recordation of Certificate or Notice of Location

The Board will apply the doctrine of estoppel to a situation where certificates of location are filed for recordation with a BLM State Office and that office informs the claimant by letter, which constitutes an official decision, of its refusal to accept them due to a post-dated check for the recordation fees, but fails to inform him that the office is not the "proper office of BLM" in which to file the certificates. Where the claimant in reliance thereon refiles the certificates with the same State Office and they are rejected, such failure constitutes the affirmative concealment of a material fact.

APPEARANCES: Jack Doyle, President, Leitmotif Mining Co., Inc., Las Vegas, Nevada, for appellant.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Leitmotif Mining Co., Inc. (Leitmotif), acting through its President, Jack Doyle, has appealed from a decision of the Nevada State Office, Bureau

of Land Management (BLM), dated November 22, 1991, rejecting for recordation its notices of location for the Leitmotif #1 through Leitmotif #32 unpatented mining claims (NMC 617741 through NMC 617772) because they were not filed in the proper BLM office, as required by section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1988), and 43 CFR 3833.1-2(a).

On appeal, Doyle contends that he contacted the BLM State Office in Phoenix, Arizona, to ascertain if certain land was open to the location of mining claims and where to file notices of location for recordation; that the Phoenix office informed him that it did not administer that area and the papers should be filed in the Stateline, Nevada, BLM office, the office closest to the site of the claims. Doyle alleges that that office informed him that it did not handle recordations, and that the filings should be sent to the BLM State Office in Reno, Nevada. BLM has not disputed these allegations.

The record shows that Leitmotif located the claims in question on December 3, 1990. Under the regulations, it had 90 days from that date in which to file a copy of the official certificates or notices of location for those claims with the proper BLM office. 43 CFR 3833.1-2(a). Assertedly in accordance with the oral instructions received from BLM, Doyle filed those certificates with the Nevada State Office on January 24, 1991. In a letter to Doyle, dated January 28, 1991, the Nevada State Office explained that it was returning those certificates without taking any action on them because they had been accompanied by a post-dated check to cover the recordation fees. It further explained: "Given the December 3, 1990, location dates on your certificates, you will still have until March 4 to resubmit your certificates along with a properly dated check in order for them to be timely filed."

On February 4, 1991, Doyle again filed the certificates with the Nevada State Office. Over 9 months later, the Nevada State Office rejected those filings because they were not made in the proper BLM office. The State Office explained that the certificates should have been filed in the BLM Arizona State Office in Phoenix.

[1] As indicated above, for mining claims located after October 21, 1976, recordation with BLM is required within 90 days of location of the mining claims. 43 CFR 3833.1-2(a). Such filing is to be made in the "proper BLM office." The regulations define "[p]roper BLM office" as "the Bureau of Land Management office listed in § 1821.2-1(d) of this title as having jurisdiction over the area in which the claims or sites are located." 43 CFR 3833.0-5(g). The cited regulation, 43 CFR 1821.2-1(d), provides:

The Bureau of Land Management has redelegated authority to District and Area Offices for processing certain types of public lands disposal and use authorization applications. In those instances where delegation has been made to the District or Area Office from the State Office, applications shall be filed with the District or Area Office having responsibility for the public lands covered by the requested action. Accordingly, applicants,

prior to the filing of an application, should contact the State, District, or Area Office of the Bureau of Land Management in their immediate vicinity or for the geographic area in which the public lands being applied for are located.

Immediately following are listed the addresses of the BLM State Offices, the areas of their jurisdiction, and an explanation to contact any of those offices or the BLM office in Washington, D.C., to obtain the addresses of the District or Area offices.

[2] The facts in this case present a classic situation for the application of the doctrine of estoppel. The Board has stated on a number of occasions that it will look to the elements of estoppel set forth in United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970), as the initial test in determining estoppel questions presented to the Board. United States v. White, 118 IBLA 266, 303, 98 I.D. 129, 149 (1991). In Ptarmigan Co., 91 IBLA 113, 117 (1986), aff'd, Bolt v. United States, 994 F.2d 603 (9th Cir. 1991), we stated:

First, we have adopted the elements of estoppel described by the Ninth Circuit Court of Appeals in United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970):

Four elements must be present to establish the defense of estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the facts; and (4) he must rely on the former's conduct to his injury.

Id. at 96 (quoting Hampton v. Paramount Pictures Corp., 279 F.2d 100, 104 (9th Cir. 1960)). See State of Alaska, 46 IBLA 12, 21 (1980); Henry E. Reeves, 31 IBLA 242, 267 (1977). Second, we have adopted the rule of numerous courts that estoppel is an extraordinary remedy, especially as it relates to the public lands. Harold E. Woods, 61 IBLA 359, 361 (1982); State of Alaska, supra. Third, estoppel against the Government in matters concerning the public lands must be based on affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978); D. F. Colson, 63 IBLA 221 (1982); Arpee Jones, 61 IBLA 149 (1982). Finally, we have noted that while estoppel may lie where reliance on Governmental statements deprived an individual of a right which he could have acquired, estoppel does not lie where the effect of such action would be to grant an individual a right not authorized by law. See Edward L. Ellis, 42 IBLA 66 (1979).

The facts in this case satisfy the elements set forth in Georgia-Pacific. BLM knew the true facts, i.e., the proper office for recordation of the claims. BLM allegedly informed Doyle of the office in which to file the certificates of location. Doyle filed those certificates in a timely

manner with the Nevada State Office, allegedly as instructed; however, due to a post-dated check, they were not accepted. The Nevada State Office did not at that time inform Doyle that the Nevada State Office was not the "proper BLM office" for filing. Instead, it advised him that he still had time to make a timely filing if he would resubmit the certificates with a properly dated check. As instructed, he did so. The Nevada State Office did not at that time, when he still had time to make a timely filing in the proper office, instruct Doyle that he had filed in the wrong office. It did not do so until over 9 months later.

Doyle was ignorant of the true facts. The regulations governing recording of mining claims with BLM do not expressly state where recordation filing are to be made. Instead, they refer to general regulations regarding filing forms with BLM. Even those regulations do not expressly state where particular filings, such as recordation filings, are to be made. While arguably 43 CFR 1821.2-1(d) requires filing in the Arizona State Office for claims located in Arizona, that regulation also advises that one may contact BLM to find out where to file. Thus, Doyle expressly followed, wittingly or not, the instructions of the regulations, first, by contacting the Arizona State Office, whose area of jurisdiction is listed in the regulations as the State of Arizona, and second, allegedly by following the advice given to him by BLM.

Because estoppel against the Government in matters concerning the public lands is an extraordinary remedy, it must be based upon a demonstration of affirmative misconduct, such as misrepresentation or concealment of material facts. However, this Board has held that oral statements by BLM are insufficient to support a claim of estoppel. Martin Faley, 116 IBLA 398, 402 (1990), and cases cited therein. Accordingly, if Doyle's allegations of oral communications with BLM were the only basis for estoppel, the record would be insufficient to support application of the doctrine. In Faley, we stated:

We have expressly held that, as a precondition for invoking estoppel, "the erroneous advice upon which reliance is predicated must be 'in the form of a crucial misstatement in an official decision.'" Cyprus Western Coal Co., [103 IBLA 278 (1988)] at 284, quoting United States v. Morris, 19 IBLA 350, 377, 82 I.D. 146, 159 (1975), and cases cited therein. (Emphasis in original.)

The "official decision" language actually first appeared in a Board decision in Marathon Oil Co., 16 IBLA 298, 316, 81 I.D. 447, 455 (1974), rev'd on other grounds, Marathon Oil Co. v. Kleppe, 556 F.2d 982 (10th Cir. 1977), which was quoting from Brandt v. Hickel, 427 F.2d 53 (9th Cir. 1970). The court in that case invoked estoppel against the Government. Brandt and another person had filed an oil and gas lease offer which was rejected. In the rejection decision, the offerors were advised of their right to appeal, but also that they could remedy the error in their offer without losing their priority. In reliance thereon, they did not appeal, but submitted an amended offer form. The Secretary later held that BLM had no authority to allow such an amendment and awarded the lease to another party. The court

held that "[n]ot every form of official misinformation will be considered sufficient to estop the government," but that "in this situation where the erroneous advice was in the form of a crucial misstatement in an official decision," estoppel could be properly applied. 427 F.2d at 56-57.

In this case, BLM's January 28, 1991, letter constitutes an "official decision," and to the extent there may have been a misunderstanding concerning Doyle's purposes when he orally communicated with BLM regarding his mining claims, there can be no mistake that BLM's letter mislead Doyle. Each of the 32 certificates of location contains a one-sentence second paragraph that states: "The claim is located in Mohave County, Arizona." These certificates were filed in the Nevada State Office and returned to Doyle along with the January 28, 1991, letter. Yet, he was not instructed by BLM in that letter that the Nevada State Office was not the proper office in which to record the claims. By failing to explain in its letter that the Nevada State Office was not the proper office for filing, BLM concealed a material fact from Doyle and prevented him from timely filing in the proper office. Such failure violates the standards of fundamental fairness.

Finally, this is not a situation where estoppel will result in Leitmotif being granted a right not authorized by law. Rather this is a case in which Leitmotif would otherwise have timely recorded its claims with BLM, as required by law, but for BLM's concealment of a material fact. In such circumstances, estoppel is properly invoked to prevent BLM from rejecting Leitmotif's certificates of location.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed. The Nevada State Office is directed to forward Leitmotif's recordation file to the Arizona State Office for the assignment of mining claim recordation numbers.

Bruce R. Harris

Deputy Chief Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

